



IT IS ORDERED as set forth below:

Date: September 13, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	CHAPTER 7
	:	
	:	BANKRUPTCY CASE NUMBER
WILBUR HUDSON,	:	09-75394-MGD
	:	
Debtor.	:	JUDGE DIEHL
	:	
CHARLES SCOTT APPAREL	:	
GROUP, INC.,	:	
	:	
Plaintiff,	:	
v.	:	ADVERSARY CASE NUMBER
	:	09-06534-MGD
WILBUR HUDSON,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court on Plaintiff's¹ Motion to Add an Indispensable Party and for

¹ The Motion identifies Plaintiff as the movant; however, Counsel for the Movant signs the motion as Attorney for Defendants/Debtors. The Court believes that the motion is filed by Counsel who was employed by the former sole shareholder of the dissolved corporation listed as the Plaintiff and therefore the matter is before the court on Plaintiff's Motion.

Substitution of a Party (“Motion”). (Docket No. 12). Charles Scott Apparel Group, Inc. (“Dissolved Corporation”) commenced this adversary proceeding (“Complaint”) on September 14, 2009, against Wilbur Hudson (“Defendant”) seeking to declare a debt owed to Dissolved Corporation by Defendant as non-dischargeable on the basis of fraud and defalcation.² (Docket No. 1).

The Dissolved Corporation filed this Motion on July 1, 2010, seeking to substitute Charles Shapiro for the Dissolved Corporation because the Dissolved Corporation cannot be revived by the Georgia Secretary of State and is not the proper party to bring this action. (Motion, ¶5). Charles Shapiro was the sole shareholder, officer and director of the Dissolved Corporation. (Motion, ¶7). The Dissolved Corporation alleges that Mr. Shapiro, as sole shareholder, is entitled to step into the shoes of the Dissolved Corporation and collect from its creditors. (Motion, ¶8). Plaintiff’s Motion to Add an Indispensable Party and for Substitution of a Party is unopposed and should be **GRANTED**.

Dissolved Corporation initiated the law suit that resulted in the judgment giving rise to the debt underlying the Complaint in 1999. According to the Georgia Secretary of State, Dissolved Corporation was administratively dissolved on February 24, 2001. The State Court of Cobb County, Georgia granted summary judgment to the Dissolved Corporation on August 6, 2001, and a *writ of fieri facias* was filed on the records of the Superior Court of Cobb County on September 1, 2001. (Complaint, ¶¶17-18). The *writ of fieri facias* was renewed on July 10, 2007. (Complaint, ¶18).

A corporation may be reinstated upon application to the Georgia Secretary of State if

² The Dissolved Corporation fails to identify under which Bankruptcy Code section it is proceeding.

application occurs within five years of the administrative dissolution. O.C.G.A. § 14-2-1422. Because it has been more than five years since Dissolved Corporation was administratively dissolved, there appears to be no means of reinstating Dissolved Corporation. A dissolved corporation may not commence a lawsuit. *Gas Pump v. General Cinema Beverages*, 12 F.3d 181, 182 (11th Cir. 1994) (*holding* once the statutory period for reinstatement under O.C.G.A. § 14-2-1422 has run, the administratively dissolved corporation may no longer initiate any activity, including the bringing of a lawsuit such as the subject federal antitrust litigation). However, during wind-up, the administratively dissolved corporation may collect its assets, such as obtaining a judgment. *See* O.C.G.A. § 14-2-1405.

Upon dissolution of a close corporation with one shareholder, the dissolved corporation's assets immediately transfer to the sole shareholder. *See Byers v. Black Motor Co.*, 65 Ga. App. 773, 778 (Ga. Ct. App. 1941). Wind-up of the Dissolved Corporation was completed on February 24, 2006. The judgment against the Defendant was a transferrable corporate asset. *In re Mercer*, 631 F.2d 1197, 1199 (5th Cir. Ga. 1980) (*holding* although a right of action is not assignable, a judgment is property that is transferrable). Therefore, the judgment against Defendant transferred to Mr. Shapiro, its sole shareholder, when wind-up of the Dissolved Corporation completed on February 24, 2006. Because the Complaint seeks to enforce Mr. Shapiro's judgment, Mr. Shapiro is the proper Plaintiff in this adversary proceeding. Accordingly, it is

ORDERED that the Plaintiff's Motion to Add an Indispensable Party and for Substitution of a Party is **GRANTED**. The caption of the case shall be amended to read "Charles Shapiro, Plaintiff vs. Wilbur Hudson, Defendant." It is further

ORDERED that the parties shall submit a JOINT AMENDED PRETRIAL ORDER within

twenty (20) days of the entry of this Order.

The clerk is directed to serve a copy of this Order on the Plaintiff, counsel for the Plaintiff, Defendant, and counsel for the Defendant.

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